

Parra Sepulveda (Migration) [2011] AATA 1 (25 November 2011)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Cristian Ignacio Parra Sepulveda
CASE NUMBER:	1720417
HOME AFFAIRS REFERENCE(S):	BCC2017/1166308
MEMBER:	David Barker
DATE:	25 November 2011
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa: • cl.500.312 of Schedule 2 to the Regulations.

Statement made on 25 November 2019 at 10:23am

CATCHWORDS

MIGRATION –Student (Temporary) (Class TU) visa – subclass 500 (Student) visa– genuine applicant for entry and stay as a student– applicant is in a genuine spousal relationship with his wife– applicant did not enter into the marriage in order to maintain residence in Australia– decision under review remitted

LEGISLATION

Migration Act 1958, ss 65, 499

Migration Regulations 1994, Schedule 2, cl 500.312

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection on 22 August 2017 to refuse to grant the applicant a Student (Temporary)(Subsequent Entrant) (Class TU) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for a Student (Temporary) (Class TU) (Subsequent Entrant) Subclass 500 Student visa on 27 March 2017. The secondary criteria in cl.500.3 must be satisfied by applicants who are members of the family unit of a person who holds a student, having satisfied the primary criteria: cl.500.2.
3. The delegate in this case refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl.500.312 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the delegate was not satisfied the applicant was a genuine temporary entrant.
4. The applicant appeared before the Tribunal on 21 November 2019 to give evidence and present arguments.
5. The applicant was assisted in relation to the review by their registered migration agent.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

7. Background

8. The applicant is a national of Chile and is 34 years old.
9. The Department delegate's decision record, a copy of which was provided with the review application, states the applicant first arrived in Australia in January 2012 as the primary visa holder of a subclass 570 student visa and that he was subsequently granted a further three student visas, with the last such visa ceasing in April 2017. The delegate noted that the applicant's study history in the Provider Registration and International Student Management System (PRISMS) indicate that he has enrolled and completed study in the following courses since his arrival:
 - Macquarie English, Macquarie Institute, English Language (Programs) (Elementary to Advanced) - 2012
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 - Bridge Business College, Certificate II in Business 2012 / 2013
 - Bridge Business College, Certificate III in Business 2013
 - Bridge Business College, Certificate IV in Business 2013 / 2014
 - Bridge Business College, Diploma of Business 2014
 - Bridge Business College, Diploma of Marketing 2015 / 2016
 - Bridge Business College, Diploma of Marketing 2016

10. The delegate's decision record states the applicant applied for subsequent entrant student visa on the basis of his current relationship. In discussing why they refused the visa application the delegate raised concern as to the applicant's own study history not showing academic progression, reasonable course completion levels. the delegate was further concerned that the applicant had not appeared to maintain strong links to his home country and that his spouse having immediate family in Australia reduces the incentive for her and the applicant to depart from Australia when her course of study is completed in March 2020.
11. Evidence the applicant provided to the Department in support of his visa application included, but was not limited to:
- Zamel's jewellers, receipt dated 27 February 2017;
 - email from Simple Ceremonies dated 17 June 2017, booking a ceremony for 17 June 2017;
 - photographs, labelled and with dates, in public settings, taken from social media;
 - Notice of Intended Marriage;
 - statement of Elvis Kiako, undated;
 - statement of Daniela [Parra Sepilveda], the visa applicant's sister, undated – text;
 - Form 888, statutory declaration of Anastasia Mitropoulou dated 21 March 2013;
 - Zamel's jewellers, purchase 12 February 2017, diamond ring;
 - NSW Births, Deaths and Marriages Relationship Certificate dated 27 November 2016;
 - NSW Births, Deaths and Marriages Marriage Certificate dated 17 June 2017;
 - statement of Viola Kiako, dated 27 March 2017;
 - statement of Cristian Parra Sepulveda, undated;
 - Residential Tenancy Agreement, for six months commencing 24 September 2016 and ending 23 March 2017;
 - Form 919 Nomination of student dependants, Viola Kiako nominating Cristian Ignacio Parra Sepulveda;
 - Letter confirming CBA account in joint names, opened 18 October 2016;
 - Bupa couple status OSHC, commencing 16 April 2017 and active until 15.3.2020.
12. Evidence provided to the tribunal at or prior to the hearing beyond copies of documents previously provide to the Department included, but was not limited to:
- written statement from the applicant ;
 - BUPA - Family cover.pdf,
 - NSW Births, Deaths and Marriages Birth Certificate for the parties' daughter, born May 2017.
 - Greek passport for the parties' daughter, born May 2017.
 - Evidence regarding the applicant and primary visa applicant 's academic studies;
 - Co-habitation evidence;
 - Bank records from CBA joint account;

- Photographs and social media records documenting parties' marriage and subsequent birth of their child.

13. The applicant's written statement states:

Thank you for taking time reviewing my application.

First and foremost, I must confirm that I applied for a Student (Temporary) (class TU) (Subsequent Entrant) (subclass 500) visa on 27 March 2017 and satisfies all the requirements to be granted this visa, I applied to be added to my wife's current student visa, however, it appears I am being assessed as the main applicant and must provide evidences that I am a genuine student. Please note, I was on a student visa previously and I have completed my studies and once my student visa was about to expire and all my education were completed, and because my wife was pregnant with our first child, I lodged an application to be added to my wife's student visa. My wife Mrs Viola KIAKO currently holding Student (Temporary) (class TU) Student (subclass 500) visa since 16/11/2016 and is a genuine student.

I declare that I, Cristian Ignacio PARRA SEPULVEDA, Date of birth [provided], applied to be added to my wife's student visa on 27 March 2017, at the time of application I was in a relationship with my wife which started at the beginning of June 2016, and we have been living together as partners in a genuine and continuing relationship since September 2016 and my wife was also 7 months pregnant with our daughter [details provided]. After the birth of our daughter, we got married on a beautiful day on 17/06/2017, with our witnesses present and we have been living together as a happy family till today.

Best day of our life was [provided] the day our beautiful daughter Gloria was born and the three of us have been inseparable since. My wife and I have so much plans for our future, to raise our child and give her best possible start in life and to be a role model for our daughter and be able to guide her in the right direction for a successful, happy and prosperous future.

My wife is enrolled in a course which will end soon and her current visa expires March 2020, it is important for us that my wife complete her studies for a secured employment for her and a successful future for our family, my wife and I are both from countries that Australian education is highly regarded and candidates with strong English language proficiency and an Australian education will top the employment agencies list and will keep a head above the rest of other competitors in the industry. We have invested in my wife's education and this decision was not taken lightly and we strongly believe we will benefit from this investment for the rest of our life with securing strong employment, may it be from owning and operating our own business or be employed. I have spent last 7 years concentrating on my education and invested heavily on getting right skills and now I am supporting my wife anyway I can for her to complete her education which is very important for her. I love my wife and my child and I will do anything to support them anyway I can.

I first arrived to Australia on 01/01/2012 and started studying General English on 06/02/2012 for not even 12 months, and very soon after that, on 29/10/2012 my English was good enough to be able to start my Vocational education program that I had planned for which was: English+ cert II + cert III + cert IV + Diploma + adv Diploma of Business which I successfully completed.

While studying I regularly consulted with my education agent and course advisors and I found out that Marketing is an important aspect of a successful business and could be very expensive to source out for any business, I then decided to invest and learn this skill a to be able to run a successful business for a sound and secure business operation for many years to come. Australia offers world class education and what we learn here is recognised worldwide. I then decided to enroll to finish a program of Diploma + Advanced Diploma of Marketing, I completed my Diploma and as I started my advanced diploma and I was already in a relationship with my wife (girlfriend then) we realised my wife was pregnant and she started suffering from a bad morning sickness and feeling ill all the time, she could not cope and I had to be a full time supporter of her and I had to work and study and take care of my

pregnant wife, all of these put me under much pressure and I had to defer my course to the next start date to continue later at a convenient time. Hence the reason I did not complete my Advanced Diploma of Marketing, I applied to be added to my wife's visa on 27 March 2017. I followed the pathway suggested to me and completed all my studies, throughout my years holding student visa in Australia, I have always been a diligent student, have always complied with my student visa conditions and have completed all my studies, please see attached evidence of my completed studies, I have always been at the same college, never changed college and always paid my fees on time and have an excellent reputation amongst all college staff.

I am married to Ms Viola Kiako and we have a beautiful daughter Miss Gloria [provided], please see attached our marriage certificate and our daughter's birth certificate and many evidences of our genuine and continuing relationship and many evidences of living together. I have also provided evidence that my wife currently is attending her college and working hard to complete her studies. I am a responsible husband and father and I do anything to provide for my wife and my child and I cannot be separated from my wife and young child. I will ask your kind consideration on granting this visa so I can continue supporting my wife until the completion of her studies and to be a support for my young daughter while my wife concentrate on her studies.

My wife and I understand student visa is a temporary visa and we must depart Australia before the expiry of my wife's student visa, my wife and I have excellent immigration history in Australia, we have always complied with our visa conditions and have never been in breach of our visa conditions.

CONSIDERATION OF CLAIMS AND EVIDENCE

14. The issue in the present case is whether the applicant intends genuinely to stay in Australia temporarily.
15. As the applicant has applied for a visa as a member of the family unit of a person who holds a student visa and the visa has been refused because he did not meet cl. 500.312, he is not required to be enrolled in a course or study or to be a genuine applicant for entry and stay as a student but as a member of the family unit of a person who holds a student visa.
16. Clause 500.312 requires:
 17. The applicant is a genuine applicant for entry and stay as a member of the family unit of a person who holds a student visa, having satisfied the primary criteria for that visa, because:
 - (a) the applicant intends genuinely to stay in Australia temporarily, having regard to:
 - the applicant's circumstances; and
 - the applicant's immigration history; and
 -; and
 - any other relevant matter; and
 - (b) the applicant intends to comply with any conditions subject to which the visa is granted, having regard to:
 - (i) the applicant's record of compliance with any condition of a visa previously held by the applicant (if any); and
 - (ii) the applicant's stated intention to comply with any conditions to which the visa may be subject; and
 - (c) of any other relevant matter.
18. In considering whether the applicant satisfies cl. 500.312, the Tribunal must have and has had regard to Direction No.69, 'Assessing the genuine temporary entrant criterion for Student visa and Student Guardian visa applications', made under s.499 of the Act.
19. The Tribunal has considered whether the applicant entered into the marriage for the primary purpose of putting himself in a position of being able to apply to be added to his wife's student visa so he could maintain residence in Australia. The tribunal has considered the

available evidence and is satisfied the applicant has demonstrated he is in a genuine spousal relationship with his wife. The oral evidence he gave during the hearing about their relationship and the birth of their child is consistent with the documentary evidence he has provided with the visa and review applications. The tribunal is satisfied that the photographic evidence provided by the applicant records the parties' relationship and also their demonstrable commitment to each other and their child. As the Tribunal is satisfied the applicant and the primary visa holder are in a genuine marital relationship, the Tribunal is satisfied the applicant did not enter into the marriage in order to maintain residence in Australia.

20. The tribunal is satisfied the applicant has completed a range of courses which display a coherent vocational pathway. The Tribunal accepts his oral evidence in relation to this issue, in that he initially focussed upon improving his English language skills, then studied business and marketing courses which will improve his prospects of employment as a painting contractor, either in his home country, Chile, or preferably in the home country of his wife, Greece. There is no evidence before the Tribunal to suggest that the applicant has breached any visa conditions to date. Therefore the Tribunal accepts his assertion that he will comply with any conditions to which the visa may be subject.
21. The Tribunal has taken into account the fact that the primary visa holder will complete the human resources course she is currently studying within a few months in March 2020. Notwithstanding that fact that her parents are currently in Australia on visitor visas and her brother is married to an Australian citizen and currently seeking to become a permanent resident, the Tribunal is not persuaded the evidence demonstrates she and the applicant are seeking to prolong their stay in Australia beyond the period of her current study. The applicant's sister was, for a period in Australia on a student visa, but she has not returned to Chile. The tribunal considers reasonable the applicant's claim that the preference for his wife and him is to visit his family in Chile and then seek work and a more permanent living situation in Greece. The Tribunal is satisfied that studies undertaken by both the applicant and his wife in Australia will benefit their future vocational prospects.
22. On basis of the above, the Tribunal is satisfied, on balance that the applicant intends genuinely to stay in Australia temporarily.
23. Accordingly, the Tribunal is satisfied that the applicant is a genuine applicant for entry and stay as a member of the family unit of a person who holds a student visa and he meets cl.500.312.
24. Given the above findings, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 500 (Student) visa.

DECISION

25. The Tribunal remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa:
 - cl.500.312 of Schedule 2 to the Regulations.

David Barker
Member